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No. 86-390

IN THE

Supreme Court of the United States

OCTOBER TERM, 1986

MULTIMEDIA, INC.,

Petitioner,

v.

CRAIG HAWKINS, by and through his Guardian ad Litem LINDA HAWKINS,

Respondent.

On Petition for a Writ of Certiorari to the Supreme Court of the State of South Carolina

MOTION FOR LEAVE TO FILE BRIEF AMICUS CURIAE AND BRIEF AMICUS CURIAE OF PRINT AND BROADCAST MEDIA AND ORGANIZATIONS † IN SUPPORT OF PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF SOUTH CAROLINA

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MOTION FOR LEAVE TO FILE BRIEF AMICUS CURIAE

The North Carolina Press Association, the News and Observer Publishing Company, Inc., The Knight Publishing Company and all other entities listed as *amici curiae* in the accompanying proposed brief hereby move the Court, pursuant to Rule 36.1 of the Rules of the Supreme Court of the United States, for leave to file the proposed brief *amicus curiae* in support of the Petition for a Writ of Certiorari to the Supreme Court of the State of South Carolina in this case.

The grounds for this motion are that *amici*, each of whom is a publishing or broadcasting entity having a

direct and immediate concern for and interest in First Amendment limitations on suits for invasion of privacy, desire to file the attached proposed brief and have obtained written consent from the Petitioner, Multimedia, Inc. Through counsel, *amici* also have requested written consent on the part of the Respondent, but such consent was not granted. Because of the nature and significance of this case for journalists and broadcasters everywhere, and particularly for those whose articles and broadcasts are distributed across state lines and/or within the State of South Carolina, *amici* respectfully submit that the points raised in the accompanying proposed brief would be helpful to the Court's consideration of the Petition for Writ of Certiorari.

For the foregoing reasons, *amici* respectfully request that this Motion for Leave To File Brief Amicus Curiae be granted.

Respectfully submitted,

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November 10, 1986

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BRIEF AMICUS CURIAE OF PRINT AND BROADCAST MEDIA AND ORGANIZATIONS IN SUPPORT OF PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF SOUTH CAROLINA

INTEREST OF AMICI

This case presents the anomalous and alarming spectre of a newspaper having been punished financially by a South Carolina jury for publishing concededly truthful facts in connection with its efforts to inform its readers about the social and personal consequences of teen-age pregnancy. The *amici curiae* submitting this brief include a wide array of entities representing all forms of the news media—newspapers, radio, and television. Many of them—such as the Associated Press, the Knight Publishing Company, the National Association of Broadcasters, and The News and Observer Publishing Company—represent editors and news directors who on every work-

ing day are responsible for making thousands of decisions about what information to distribute to the citizens of South Carolina, twelve of whom sat as *ex post facto* censors in this case. All of them represent news men and women whose stories and broadcasts are distributed widely and who need this Court's considered guidance concerning the limitations imposed by the First Amendment on the tort of invasion of privacy, especially with regard to the form commonly referred to as "publication of embarrassing private facts."

Since the publication in 1890 of Samuel Warren's and Louis Brandeis' enormously influential *Harvard Law Review* article entitled "The Right of Privacy," this tort has spread gradually and steadily from jurisdiction to jurisdiction, largely unencumbered by constitutional restraints. Because the reach of the First Amendment's protection with regard to the publication of truthful, private facts has not been spelled out, journalists must make their editorial judgments about private facts in the dark. Accordingly, the *amici* listed below have strong, direct interests in the Court's granting the Petition for Writ of Certiorari and using this case as an opportunity to illumine their constitutional path.

STATEMENT OF THE CASE

We adopt the Statement of the Case set forth by petitioner in its petition.

SUMMARY OF ARGUMENT

Petitioner has set out concisely the compelling grounds on which it seeks to have a writ of certiorari issue to review the judgment in this case. The *amici* support that petition on the grounds raised therein and respectfully emphasize to the Court two points. First, the decision below appears to conflict with this Court's decision in *Connick v. Myers*, 461 U.S. 138 (1983), in which the

Court found the determination whether speech is "of public concern" to be a question of law, not one of fact. Second, the decision below, in any event, raises important First Amendment issues that affect all those who utter truthful speech, from national or regional news organizations disseminating information in many states to individuals discussing their neighbors over the backyard fence.

If the decision in this case is allowed to stand without clarification, there is little doubt that publishers will be deterred from disseminating truthful information that is of legitimate public concern. If a jury may award a plaintiff actual and punitive damages in a virtually arbitrary amount from a publisher who has accurately included plaintiff's name in an article on a topic of undisputed public concern, the flow of important information to the public will be curtailed. In an effort to avoid the incalculable risk of capricious jury verdicts, future publications shall "steer far wider of the unlawful zone," and omit truthful information of names, locations and personalities, those indicia of credibility and humanity that undeniably contribute to the quality of debate about issues of public concern.

Moreover, the interstate dissemination of news in our society demands a constitutional standard regarding the imposition of liability for publishing truthful information. Publishers such as the news wire services, the national television networks, and regionally and nationally distributed newspapers, among others, will otherwise be forced to predict, and to homogenize their news coverage to meet, the standards acceptable to the most intolerant jury in the most conservative jurisdiction.

This Court has on several occasions discussed the relatively youthful tort of invasion of privacy by the publication of truthful intimate facts. *E.g., Cox Broadcasting v. Cohn*, 420 U.S. 469, 487-90 (1975); *Time, Inc. v. Hill*, 385 U.S. 374, 383 n.7 (1967). This Court, however, has

to date declined to decide whether one may, consistent with the First Amendment, "be made criminally or civilly liable for publishing information that is neither false nor misleading but absolutely accurate, however damaging it may be in reputation or individual sensibilities." *Cox, supra*, at 489. This Court has often noted that truth may not be the subject of either civil or criminal sanctions where discussion of public concern is at issue. *E.g., Garrison v. Louisiana*, 379 U.S. 64, 74 (1964); *Philadelphia Newspapers, Inc. v. Heppes*, —— U.S. ——, 106 S.Ct. 1558, 1559 (1986); *cf. Smith v. Daily Mail Publishing Company*, 443 U.S. 97, 103 (1979) (". . . if a newspaper lawfully obtains truthful information about a matter of public significance, then state officials may not constitutionally punish publication of the information, absent a need to further a state interest of the highest order.")

Because the tort of invasion of privacy by publication of truthful intimate facts, like the tort of libel, possesses an inherent capacity for "repression of expression," *New York Times v. Sullivan*, 376 U.S. 254, 269 (1964), it necessarily implicates First Amendment values and concerns. Labeling a particular form of speech as an "invasion of privacy" does not cloak it with a "talismanic immunity from constitutional limitations." *Cf. New York Times, supra*, at 269.

This case presents the Court with significant First Amendment issues ripe for determination. First, does some degree of First Amendment protection attach to all truthful speech? Second, what degree of First Amendment protection should be afforded publication of truthful information in order to provide some "breathing space" and assure that publishers are not unnecessarily deterred from disseminating truthful information that is of legitimate public interest or concern? *Cf. Connick, supra*. Third, should the Court, as an element of that First Amendment protection, conduct an independent ex-

amination of the entire record in an invasion of privacy case "to ensure that protected expression will not be inhibited"? *See Bose Corp. v. Consumers Union*, 466 U.S. 485, 104 S.Ct. 1949, 1962, *reh. denied* (1984).

ARGUMENT

I. The Decision Below Conflicts with a Prior Decision of This Court.

In *Connick*, *supra*, a federal employee brought an action contending that her employment had been wrongfully terminated because she had exercised her constitutionally protected right of free speech. The Court, noting that in such cases First Amendment protections attach to "speech on matters of public concern," focused on the proper determination of that issue. The Court first stated that "the question of whether expression is of a kind that is of legitimate concern to the public is also the standard in determining whether a common law action for invasion of privacy is present." *Id.* at 143 n.5. The Court observed that whether the speech "addresses a matter of public concern must be determined by the content, form, and context of a given statement, as revealed by the whole record." *Id.* at 148. That determination, the Court held, is one of law for the court. *Id.* at 148 n.7. That standard has been applied by the lower federal courts. *E.g.*, *Jurgensen v. Fairfax County*, 745 F.2d 868, 878 (4th Cir. 1984); *Knapp v. Whitaker*, 757 F.2d 827, 839 (7th Cir.), *cert. denied*, —— U.S. ——, 106 S.Ct. 36 (1985); *Thomas v. Harris County*, 784 F.2d 648, 653 n.11 (5th Cir. 1986).

Petitioner notes in its petition that there is "a direct conflict among the state and federal courts on the issue whether the question of public interest is for the judge to decide in the first instance or for the jury alone." (Petition, at 7) The South Carolina Supreme Court's decision in this case that this issue is one for the jury

alone is in direct conflict with this Court's decision in *Connick*.

II. First Amendment Interests Are at Stake.

The tort of invasion of privacy by the publication of truthful intimate facts is a relatively recent, uniquely American invention.[1] It was first conceptualized in 1890 by Samuel Warren and Louis Brandeis in their celebrated article "The Right to Privacy," 4 Harv. L. Rev. 193. By 1975 it had been recognized judicially or by statute in at least 34 states. *Cox, supra,* at 488. In South Carolina, it is defined as the "publicizing of one's private affairs with which the public has no legitimate concern" and which is "of such a nature as a reasonable man can see might and probably would cause mental distress and injury to anyone possessed of ordinary feelings and intelligence." *Meetze v. Associated Press,* 230 S.C. 330, 335, 338, 95 S.E.2d 606, 608, 610 (1956). The elements of the tort in South Carolina are essentially the same as in other states that have recognized the cause of action. *See,* Restatement (Second) of Torts, Section 652D (1977).

It is self-evident that this tort, first conceived in 1890, was unknown to and uncontemplated by the framers of the First Amendment. This Court has discussed the tort but never addressed the issue of whether it implicates First Amendment concerns. *Cox, supra,* at 487-90; *Time, supra,* at 383 n.7.

This Court has frequently suggested that truthful speech is subject to a high, if not absolute, degree of First Amendment protection.[2] *Garrison, supra,* at 74;

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[1] The tort has been rejected or gone unrecognized in other common law jurisdictions. R. Smolla, *Suing The Press,* at 123 (1986).

[2] The irony inherent in an intimate facts invasion of privacy case is self-evident. Where "false speech" defamation is at issue, the speaker—whether a national newspaper or a smalltown gadfly—has had the opportunity prior to publication to establish the ultimate

Smith, supra, at 103; *Philadelphia Newspapers, supra,* at 1559 (The First Amendment "does require the target of a defamatory statement to prove that his assailant was at fault, and I agree that it provides a constitutional shield for truthful statements." *Id.* at 1566, Stevens, J., dissenting, joined by Burger, J., White, J., and Rehnquist, J.) The *amici* submit that First Amendment interests are implicated by this tort and that these important First Amendment concerns should be addressed by this Court.

Although this Court's discussions have provided virtually no definition of the First Amendment interests implicated by this modern tort, the history of libel cases decided by this Court provides some guidelines as to the types of concerns involved. In *New York Times v. Sullivan, supra,* and its progeny, the Court has held that even false speech about public officials or public affairs is entitled to First Amendment protection. The reasoning is simple: ". . . erroneous statement is inevitable in free debate, and . . . it must be protected if the freedoms of expression are to have the 'breathing space' that they 'need . . . to survive.'" *Id.* at 271-72. The Court stated

> a rule compelling the critic of official conduct to guarantee the truth of all his factual assertions—

"defense" of truth which may be proved by objective facts. In an intimate facts invasion of privacy case, the speaker has no way to determine prior to publication whether a jury may later decide—on what is of necessity a subjective basis—that the subect matter was not "of public concern." Moreover, *New York Times* and its progeny provide protection of various degrees for some *false* speech of public concern, but appear to have substantially reduced or removed those protections for false speech where the subject matter is not "of public concern." *Dun & Bradstreet, Inc. v. Greenmoss Builders, Inc.,* —— U.S. ——, 105 S.Ct. 2939, 2955 (1985); *Philadelphia Newspapers, Inc., supra,* at 1559. If the speaker simply guesses wrong on the "of public concern" issue, he could, after *Dun & Bradstreet,* succeed with what may be his only remaining "defense" in a libel suit—that of truth—only to find it a hollow victory if the second claim against him is for invasion of privacy.

> and to do so on pain of libel judgments virtually unlimited in amount—leads to . . . 'self-censorship.' Allowance of the defense of truth, with the burden of proving it on the defendant, does not mean that only false speech will be deterred. Under such a rule, would-be critics of official conduct may be deterred from voicing their criticism, even though it is believed to be true and even though it is in fact true, because of doubt whether it can be proved in court or fear of the expense of having to do so. They tend to make only statements which 'steer far wider of the unlawful zone.' (cites omitted) The rule thus dampens the vigor and limits the variety of public debate.

Id. at 279.

Justice Brennan, in his dissent in *Dun & Bradstreet, Inc., supra*, summarized this analysis as follows:

> Cases since *New York Times v. Sullivan* have proceeded from the general premise that all libel law implicates First Amendment values to the extent it deters true speech that would otherwise be protected by the First Amendment.

Id. at 2955.

Similarly, even if truthful speech may, in rare circumstances, be constitutionally punishable because of privacy concerns, First Amendment values are nonetheless implicated because such sanctions will necessarily deter other truthful speech of legitimate public concern that would otherwise be protected by the First Amendment.

The concept of punishing truthful speech is itself a startling one in a nation founded on principles of individual autonomy and freedom of speech. Against the background of that rich historical tapestry of free expression, it is sobering to contemplate the chilling effect that punishment of truthful speech may have. In a society as diverse as our own, what newspaper editor op-

erating on deadline can accurately predict whether a jury may later decide that a particular truthful comment or photograph is not "of public concern"? What national network news editor splicing tape for a daily 6:30 p.m. news broadcast can accurately predict whether a jury in South Carolina or California may later decide that its accurate visual images of victims of war, natural disaster, disease or domestic violence are not "of public concern"? What individual can accurately predict whether a jury may later decide that his or her truthful comment to a third party that a neighbor has an infectious disease or an illegitimate child is not "of public concern"? Can we safely leave to the sole discretion of juries the role of setting the outer limits, on a case-by-case basis, of what truthful speech about the fabric of our daily lives is permissible? [3] As this Court has stated:

> It is no doubt true that a central purpose of the First Amendment " 'was to protect the free discussion of governmental affairs.' " (cites omitted). But our cases have never suggested that expression about philosophical, social, artistic, economic, literary or ethical matters . . . is not entitled to full First Amendment protection.

Abood v. Detroit Bd. of Education, 431 U.S. 209, 231-232 (1977).

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[3] " 'Newsworthy' facts include not just descriptions of events and information related to politics, economics, and social policy, but also facts that show how people live and work and think. Entertaining vignettes, interesting profiles of ordinary as well as extraordinary people, and true life pictures of spectators and passersby as well as of those at the center of a main event, all are 'newsworthy.' " B. Dill, *The Journalist's Handbook on Libel and Privacy*, at 136 (1986). *See also*, Restatement (Second) of Torts § 652D, Comment j (1977): "The scope of a matter of legitimate concern to the public . . . extends also to the use of names, likenesses or facts in giving information to the public for purposes of education, amusement or enlightenment . . . ."

If publishers are to be punished, with no deference given to First Amendment concerns, for including in news articles about matters of undisputed public concern the names and faces of the individuals on whom events of the day have personal impact, the news pages and television screens in this country will cease to be mirrors of society and its complexities. They will instead become dry recitations of impersonal statistics to be ignored by the public. Without the context of personalities and details, the news coverage of important events and issues will be diminished in its humanity and in its credibility.

Because of the important First Amendment interests here at stake, *amici* respectfully urge the Court to provide some illumination and guidance on the important issues raised by this case.

III. The Court Should Determine the Degree of First Amendment Protection Required.

Petitioner has focused on several elements of the constitutional protection that should be afforded publication of truthful information. As a starting point, First Amendment interests require that a plaintiff in an intimate facts invasion of privacy case bear the burden of proving the absence of public interest in the publication, as opposed to the defendant bearing the burden of proof that the publication was of public interest. Second, First Amendment interests require that plaintiff demonstrate some variation of "constitutional malice" as defined in *New York Times, supra.* Third, First Amendment interests require that both of those elements be proved by "clear and convincing evidence." Fourth, and perhaps most important, First Amendment interests require that the determination of the issue of "public interest" be not a question of fact to be determined solely by the jury. The First Amendment instead requires the trial court to make at least a threshold determination whether the pub-

lication may be construed as being not "of public interest."

A. True Speech Should Be Presumptively Protected and the Burden of Proof Should Lie With Plaintiff.

This Court held in *Philadelphia Newspapers*, *supra*, that "at least where a newspaper publishes speech of public concern," a private figure plaintiff in a libel suit must bear the burden of showing that the speech at issue is false before recovering damages from a media defendant. In an intimate facts invasion of privacy suit, the very question of whether the speech is "of public concern" is the crucial issue. The logic of *Philadelphia Newspapers* suggests that where state law requires a defendant, in order to avoid liability, to prove that speech *is* "of public concern," some truthful speech of legitimate public concern will be deterred "because of the fear that liability will unjustifiably result." *Id.* at 1564. In accordance with *Philadelphia Newspapers*, minimal First Amendment protection requires that the burden of proof on that issue should lie with the plaintiff.

The *amici* submit, moreover, that actual true speech is entitled to protection greater than that afforded the "false" speech protected by the constitutional aspects of libel law to assure "breathing space" for true speech. True speech should at least be entitled to a presumption that it is absolutely protected as speech "of public concern." Certainly this society can tolerate—and should, indeed, sufficiently welcome—the exchange of truthful information to protect it with the presumption that the communication of accurate information is in the public interest. As petitioner has urged, that presumption should yield, if ever, only to clear and convincing evidence that the speech is not "of public concern."

B. The "Of Public Concern" Issue Is One Of Law for the Court.

Perhaps the most important issue raised by petitioner involves the determination of the ultimate issue in such

a case: Is the issue of whether a publication is "of public concern" one of pure fact to be determined solely by the jury?

In two of its recent decisions, this Court has suggested that speech that is not "of public concern" should receive a diminished degree of First Amendment protection. *Dun & Bradstreet, Inc., supra; Philadelphia Newspapers, supra,* at 1567 ("When the issue is of exclusively private concern and the plaintiff is a private figure . . . the constitutional requirements do not necessarily force any change in at least some of the features of the common-law landscape.")

Although the question of whether the allegedly false publications in *Dun & Bradstreet, Inc., supra,* and in *Philadelphia Newspapers, supra,* were "of public concern" was crucial to those cases, the Court barely addressed the issue of how such determinations should be made. As Justice Brennan stated in his dissent in *Dun & Bradstreet* (joined by Justices Marshall, Blackmun and Stevens), the five members of the court who voted to affirm the plaintiff's award "provided almost no guidance as to what constitutes a protected 'matter of public concern.'" *Dun & Bradstreet, supra,* at 2959-2960. Even less guidance is offered in *Philadelphia Newspapers.* Because that issue has become one of substantial significance in both libel and truthful intimate facts cases, one which transforms constitutionally protected speech into readily punishable speech, it is an issue which must in the first instance be determined by the trial court. To leave such a subjective issue solely to the jury is to assure that important truthful speech of all kinds shall go forever unuttered.

As Justice Douglas noted in his concurring opinion in *Time, supra*:

> A trial is a chancy thing, no matter what safeguards are provided. To let a jury on this record

> return a verdict or not as it chooses is to let First Amendment rights ride on capricious or whimsical circumstances, for emotions and prejudices often do carry the day.

Id. at 402.

This Court, in applying First Amendment standards in a recent "free speech" case, held that the issue "of public concern" is one of law for the court to decide. *Connick, supra.* It is true that this Court, in *Gertz v. Robert Welch, Inc.*, 418 U.S. 323 (1974) in rejecting the constitutional standards applicable to false and defamatory speech originally established in *Rosenbloom v. Metromedia*, 403 U.S. 29 (1971), specifically expressed concern over the "great difficulty of forcing state and federal judges to decide on an *ad hoc* basis which publications address issues of 'general or public interest' and which do not . . . ." *Gertz, supra*, at 346. However difficult that task may be for judges who may properly compare the content, form and context of a publication with the body of law developed by other courts, it is an impractical and dangerous task to delegate to juries who may not properly make such comparisons and who are more likely to be swayed by passion or prejudice.

IV. The First Amendment Requires Independent Review of the Entire Record.

Assuming *arguendo* that the publication of truthful but intimate facts which are of no public concern can, under rare circumstances, be punished consistent with the First Amendment, the determination of whether such a publication is "of public concern" is a dispositive constitutional issue regarding which this Court should conduct an independent review. Various forms of speech have been found to be unprotected by the First Amendment, including fighting words, incitement to riot, obscenity and child pornography. This Court has nonetheless found that the First Amendment concerns such cases

present require careful appellate scrutiny. In upholding independent review of the record in such cases by appellate courts, this Court has stated:

> In each of these areas, the limits of the unprotected category, as well as the unprotected character of particular communications, have been determined by the judicial evaluation of special facts that have been deemed to have constitutional significance. *In such cases, the Court has regularly conducted an independent review of the record both to be sure that the speech in question actually falls within the unprotected category and to confine the perimeters of any unprotected category within acceptably narrow limits in an effort to ensure that protected expression will not be inhibited.* Providing triers of fact with a general description of the type of communication whose content is unworthy of protection has not, in and of itself, served sufficiently to narrow the category, nor served to eliminate the danger the decisions by triers of fact may inhibit the expression of protected ideas. The principle of viewpoint neutrality that underlies the First Amendment itself (citations omitted) also imposes a special responsibility on judges whenever it is claimed that a particular communication is unprotected.

Bose, supra, at 1962.

The facts of this case cry out for an independent review of the record. The petitioner published, in one of its newspapers, an article concerning medical and social problems resulting from pregnancies among unwed teenage mothers. In a related "side-bar" article, the newspaper focused on a local case history of an unwed teenage mother in which it identified the respondent as the father of the illegitimate child. The truthfulness and accuracy of the published facts were never disputed. Nor did respondent dispute that the general subject of pregnancies among unwed teenage mothers was a matter of important public concern. (Petition at 2-3)

Truthful speech should command the strongest of First Amendment protections. Just as this Court has provided "independent review" in cases involving other forms of allegedly unprotected speech, such as child pornography, *New York v. Ferber*, 458 U.S. 747 (1982) and obscenity, *Roth v. United States*, 354 U.S. 476 (1957), it should provide independent review in this case involving an award of damages arising from the publication of truthful information related to a subject of undisputed public concern.

CONCLUSION

For the foregoing reasons, *amici* respectfully request that the petition for writ of certiorari to the Supreme Court of the State of South Carolina be granted.

Respectfully submitted,

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APPENDIX

APPENDIX

DESCRIPTION OF AMICI

1. *Associated Press*—The Associated Press, the world's largest newsgathering organization, is a mutual news cooperative organized under the Not-For-Profit Corporation Law of the State of New York, and engages in gathering and distributing news of local, national and international importance to its member newspaper and broadcast stations across the United States and throughout the world. The AP, on its own behalf and on behalf of its members, has a vital interest in protecting the right of the press to gather and publish news without fear of sanctions for accurately reporting matters of public interest.

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2. *The Knight Publishing Company*—The Knight Publishing Company, a Delaware corporation, publishes *The Charlotte Observer*, a daily newspaper with a circulation of approximately 208,000 on weekdays and 259,000 on Sundays. Approximately 24,000 copies of *The Charlotte Observer* are distributed in South Carolina each weekday, and approximately 31,000 copies are sold in South Carolina on Sundays. Because of the persuasive authority of this decision by the highest court of the State of South Carolina, and because of the effect of this decision as precedent in a state in which The Knight Publishing Company circulates a daily newspaper, The Knight Publishing Company has a vital interest in obtaining Su-

preme Court review of this case and in reversing the decision below.

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3. *Midwest Communications, Inc.*—Midwest Communications, Inc. is a Minnesota corporation which owns and operates five radio and television stations in Minnesota, Wisconsin, and Michigan, including WCCO-AM-TV in Minneapolis, Minnesota.

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4. *National Association of Broadcasters*—The National Association of Broadcasters ("NAB"), organized in 1922, is a non-profit incorporated association of radio and television broadcast stations and networks. NAB membership include more than 4800 radio stations, 900 television stations, and the major commercial broadcast networks. Among NAB's priorities is the protection and enhancement of broadcasters' First Amendment rights, including the freedom to report and comment on news events. Among NAB's members are more than 100 radio and television stations located in South Carolina.

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5. *The News and Observer Publishing Company*—The News and Observer Publishing Company is a North Carolina corporation whose principal place of business is located in Raleigh, Wake County, North Carolina. The company publishes *The News & Observer*, *The Raleigh Times*, and 18 other newspapers throughout North Carolina and South Carolina. The newspapers published by the company in South Carolina include *The Herald*, published daily in Rock Hill, South Carolina; *The Beaufort Gazette*, Beaufort, South Carolina; and *The Island Packet*, published in Hilton Head, South Carolina.

Hugh Stevens
Sanford, Adams, McCullough & Beard
One Exchange Plaza
Raleigh, North Carolina 27602
Attorneys for the News and
Observer Publishing Company

6. *North Carolina Press Association, Inc.*—The North Carolina Press Association, Inc. (the "NCPA") is a voluntary membership association chartered as a non-profit corporation under the laws of North Carolina. Its principal place of business is located at Suite 1100, 5 West Hargett Street, Raleigh, North Carolina 27602. Its membership consists of approximately 55 daily newspapers and 120 non-daily newspapers published throughout North Carolina. A number of the NCPA's member newspapers circulate in South Carolina and therefore are directly affected by the decision below.

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Raleigh, North Carolina 27602
Attorneys for the North Carolina Press
Association, Inc.

7. *The Reporters Committee for Freedom of the Press* —The Reporters Committee for Freedom of the Press is a voluntary, unincorporated association of reporters and news editors from the print and broadcast media devoted to the protection of the First Amendment interests of the press. It has provided representation, information, legal guidance or research in virtually every major press freedoms case litigated since 1970.

Jane E. Kirtley
The Reporters Committee for Freedom of the Press
800 18th Street, N.W.
Suite 300
Washington, D.C. 20006

8. *Scrips Howard*—Scripps Howard, one of the nation's largest communications companies, is engaged in virtually every aspect of news and information gathering and dissemination. One American in nine is a Scripps Howard reader, viewer, or listener. Scripps Howard publishes daily newspapers in fourteen cities as well as a variety of non-daily newspapers, magazines, and business journals, and owns and operates radio and television stations, cable systems, Scripps Howard News Service, and United Media Enterprises, a multi-media service company.

Bruce W. Sanford
Baker & Hostetler
1050 Connecticut Avenue, N.W.
Washington, D.C. 20036

9. *The Society of Professional Journalists, Sigma Delta Chi*—The Society of Professional Journalists, Sigma Delta Chi, is a voluntary, non-profit organization of 24,000 members representing every branch and rank of print and broadcast journalism. Formed in 1909, it is the largest organization of journalists in the United States.

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